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Paragon Systems, Inc. and Victor Jordan. Case 08–CA–184044

July 25, 2018

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS MCFERRAN
AND KAPLAN

The General Counsel seeks a default judgment in this case pursuant to the terms of an informal settlement agreement. Upon a charge and a first amended charge filed by Victor Jordan on September 12 and December 12, 2016, respectively, the General Counsel issued a complaint on January 30, 2017, against Paragon Systems, Inc. (the Respondent), alleging that it violated Section 8(a)(1) of the National Labor Relations Act (the Act) by maintaining five overbroad work rules in its employee handbook. On February 10, 2017,¹ the Respondent filed an answer to the complaint.

Subsequently, the Respondent and Charging Party Victor Jordan executed an informal settlement agreement (Settlement Agreement), which was approved by the Regional Director for Region 8 on April 26. Pursuant to the terms of the Settlement Agreement, the Respondent agreed, among other things, to (1) email the appropriate Board notice to all employees; (2) rescind the overbroad work rules as they appear in the Respondent's employee handbook; (3) notify employees in writing that the work rules have been rescinded; and (4) provide the Region with documentation reflecting that the work rules were rescinded and that the employees were so notified.

The Settlement Agreement also contained the following provision:

The Charged Party agrees that in case of noncompliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days' notice from the Regional Director of the National Labor Relations Board of such noncompliance without remedy by the Charged Party, the Regional Director will reissue the complaint previously issued on January 30, 2017 in the instant case(s). Thereafter, the General Counsel may file a motion for default judgment with the Board on the allegations of the complaint. The Charged Party understands and agrees that the allegations of the aforementioned complaint will be deemed admitted and its Answer to such complaint will be considered withdrawn. The only issue that may be raised before

the Board is whether the Charged Party defaulted on the terms of this Settlement Agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an Order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board order ex parte, after service or attempted service upon Charged Party/Respondent at the last address provided to the General Counsel.

On May 3, the compliance officer for Region 8 (Compliance Officer), on behalf of the General Counsel, sent a compliance package to the Respondent's counsel, by regular mail, containing copies of the Notice to Employees, a Certification of Compliance form to be completed by an official of the Respondent and returned to Region 8, and a detailed letter of the Respondent's obligations under the Settlement Agreement.

On June 3, the Compliance Officer sent a letter to the Respondent and its counsel, by regular mail, reminding the Respondent of the steps necessary to ensure compliance with its obligations under the Settlement Agreement and notifying the Respondent that, to date, it had failed to comply with the terms of the Settlement Agreement. The Compliance Officer also notified the Respondent that noncompliance with the Settlement Agreement would result in the Region reissuing the complaint in light of the breach of the Settlement Agreement and the filing of a motion for default judgment with the Board.

On June 15, the Respondent's counsel sent an email to the Compliance Officer apologizing for the Respondent's failure to timely respond and asking if the Region would allow the Respondent to physically mail the Notice to Employees instead of emailing it as required by the Settlement Agreement.

After receiving the June 15 email, the Compliance Officer left multiple telephone messages for the Respondent's counsel acknowledging receipt of the email and asking the Respondent's counsel to contact her regarding the matter. The Respondent's counsel failed to return these telephone calls.

On July 12, the Regional Director sent a letter to the Respondent and its counsel, by regular mail, to notify the Respondent again that noncompliance with the Settlement Agreement would result in the Region reissuing the complaint in light of the breach of the Settlement Agreement and the filing of a motion for default judgment.

¹ All subsequent dates are in 2017 unless otherwise noted.

ment with the Board. Also on July 12, the Compliance Officer emailed a copy of the Regional Director's letter to the Respondent's counsel.

Apart from the question posed in its June 15 email, the Respondent failed to respond to the correspondence referred to above and failed to comply with any of the terms of the Settlement Agreement. Accordingly, on August 10, pursuant to the terms of the noncompliance provisions of the Settlement Agreement, the Regional Director issued a complaint based on breach of affirmative provisions of the Settlement Agreement.²

On September 19, the General Counsel filed a Motion for Default Judgment with the Board, requesting that the Board issue a Decision and Order against the Respondent containing findings of fact and conclusions of law based on the allegations in the reissued complaint, and provide "a full remedy for each and every unfair labor practice violation." On September 20, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

According to the uncontroverted allegations in the motion for default judgment, the Respondent has failed to comply with any of the terms of the Settlement Agreement. Consequently, pursuant to the noncompliance provisions of the Settlement Agreement set forth above, we find that the Respondent's answer to the original complaint has been withdrawn and all of the allegations in the reissued complaint are true.³ Accordingly, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been an Alabama corporation with an office and place of business in Herndon, Virginia, and has been engaged in providing security guard services at various federal government facilities throughout the United States of America, including the facility at issue, Anthony J. Celebrezze Fed-

eral Office Building, 1240 East Ninth Street, Cleveland, Ohio (AJC Federal Building).

During the 12-month period ending August 11, 2016, the Respondent provided services valued in excess of \$50,000 in states other than the State of Ohio.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

At all material times, the United Government Security Officers of America, International Union, and its Local 241 (Union) has been a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Janna Chirdon	Employee Relations Specialist
Roman Gumul	Assistant Vice President Labor Relations
Unnamed Attorney	Vice President/General Counsel

At all material times, the Respondent has maintained the following work rules under "Rules for Personal Conduct, Major Offenses," in its employee handbook:

(1) Rule 23: Using personal radios, television sets, computers, cell phones, cards, games, or other items at the facility that may result in distraction from duties;

(2) Rule 26: Participation in any activity that would adversely affect the reputation of the clients; and

(3) Rule 28: Failure to demonstrate the highest standards of integrity, personal, and moral conduct expected from Security professionals.

At all material times, the Respondent has maintained the following work rules under "Rules for Personal Conduct, Minor Offenses," in its employee handbook:

(1) Rule 4: Disparaging Company's client, whether this occurs on or off company property/time; and

(2) Rule 13: Engaging in personal work or activities while on duty.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7

² On September 6, the acting regional attorney sent a letter to the Charging Party, the Respondent, and the Respondent's counsel, by certified mail, to notify them that the Settlement Agreement was inadvertently not attached to the reissued complaint. The Acting Regional Attorney enclosed a copy of the Settlement Agreement and reissued complaint with the letter.

³ See *U-Bee, Ltd.*, 315 NLRB 667, 668 (1994). Accordingly, we do not apply the analysis set forth in *The Boeing Co.*, 365 NLRB No. 154 (2017), to the uncontested complaint allegations.

of the Act in violation of Section 8(a)(1) of the Act. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, and in accordance with the General Counsel's request for a "full remedy" for the violations found, we shall order the Respondent to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(1) by maintaining unlawful handbook rules, we shall order the Respondent to rescind the unlawful rules to the extent it has not already done so. Pursuant to *Guardsmark, LLC*, 344 NLRB 809, 812 fn. 8 (2005), enfd. in part 475 F.3d 369 (D.C. Cir. 2007), the Respondent may comply with our order of rescission by rescinding the unlawful provisions and republishing its handbook without the unlawful rules. We recognize, however, as we did in *Guardsmark*, that republishing the handbook could be costly. Accordingly, until it republishes the handbook without the unlawful provisions, the Respondent may supply the employees either with inserts to the handbook stating that the unlawful rules have been rescinded or with new and lawfully worded rules on adhesive backing that will correct or cover the unlawful rules. Any copies of the handbook that include the unlawful rules must include the inserts before being distributed to employees. See, e.g., *Triple Play Sports Bar & Grille*, 361 NLRB 308, 315 (2014), enfd. mem. sub nom. *Three D, LLC v. NLRB*, 629 Fed.Appx. 33 (2d Cir. 2015). We shall also order the Respondent to notify the employees in writing that it has rescinded the unlawful work rules.

ORDER

The National Labor Relations Board orders that the Respondent, Paragon Systems, Inc., Herndon, Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining the following unlawful work rules in its employee handbook:

Rules for Personal Conduct, Major Offenses:

Rule 23: Using personal radios, television sets, computers, cell phones, cards, games, or other items at the facility that may result in distraction from duties.

Rule 26: Participation in any activity that would adversely affect the reputation of the clients.

Rule 28: Failure to demonstrate the highest standards of integrity, personal, and moral conduct expected from Security professionals.

Rules for Personal Conduct, Minor Offenses:

Rule 4: Disparaging Company's client, whether this occurs on or off company property/time; and

Rule 13: Engaging in personal work or activities while on duty.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) To the extent it has not already done so, rescind Rules for Personal Conduct, Major Offenses, Rules 23, 26, and 28, and Rules for Personal Conduct, Minor Offenses, Rules 4 and 13.

(b) Revise the employee handbook to delete the above unlawful rules and advise employees in writing that it has done so and that the unlawful rules will no longer be enforced.

(c) Furnish all current employees with inserts for the employee handbook that (1) advise that the unlawful rules have been rescinded or (2) provide the language of lawful policies, or publish and distribute to all current employees a revised employee handbook that (1) does not contain the unlawful rules or (2) provides the language of lawful policies.

(d) Within 14 days after service by the Region, post at its Cleveland, Ohio facility copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 8, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees em-

⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

ployed by the Respondent at any time since March 12, 2016.

(e) Within 21 days after service by the Region, file with the Regional Director for Region 8 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. July 25, 2018

John F. Ring, Chairman

Lauren McFerran, Member

Marvin E. Kaplan, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD
APPENDIX
NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT maintain unlawful rules in our employee handbook.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, to the extent we have not already done so, rescind the following unlawful rules as they appear in our employee handbook:

Rules for Personal Conduct, Major Offenses:

Rule 23: Using personal radios, television sets, computers, cell phones, cards, games, or other items at the facility that may result in distraction from duties;

Rule 26: Participation in any activity that would adversely affect the reputation of the clients; and

Rule 28: Failure to demonstrate the highest standards of integrity, personal, and moral conduct expected from Security professionals.

Rules for Personal Conduct, Minor Offenses:

Rule 4: Disparaging Company's client, whether this occurs on or off company property/time; and

Rule 13: Engaging in personal work or activities while on duty.

WE WILL revise the employee handbook to delete the above unlawful rules, and WE WILL advise employees in writing that we have done so and that the unlawful rules will no longer be enforced.

WE WILL furnish all current employees with inserts for the employee handbook that (1) advise that the unlawful rules have been rescinded or (2) provide the language of lawful policies, or publish and distribute to all current employees a revised employee handbook that (1) does not contain the unlawful rules or (2) provides the language of lawful policies.

PARAGON SYSTEMS, INC.

The Board's decision can be found at <https://www.nlr.gov/case/08-CA-184044> or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

